

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR DRILLING PERMIT IN THE)	
NAME OF ROTARUN SKI CLUB, INC)	FINAL ORDER
NUMBERED 849072)	
_____)	

PROCEDURAL BACKGROUND

In March of 2006, the Idaho Department of Water Resources ("Department" or "IDWR") received two applications for water right permit (unnumbered) filed in the name of Rotarun Ski Club Inc. ("Rotarun" or "applicant"). Rotarun later withdrew the applications, asserting that the proposed use qualifies as a domestic use defined by Idaho Code § 42-111(1)(a) and that a water right could be perfected by obtaining a drilling permit, drilling a well, and beneficially using the ground water.

Rotarun, through its representative, Charles G. Brockway, Jr., and the Department exchanged letters and communicated verbally between March of 2006 and August of 2007. On August 9, 2007 Allen Merritt, the Department's Southern Region Manager, sent a letter to Brockway, agreeing with the assertion that the proposed use as represented by the applicant could qualify as an exempt domestic use.

On August 16, 2007, the Department received a letter from Sage Springs Homeowners Association ("Sage Springs" or "protestant") through its attorney, Travis Thompson. The letter questioned the Department's conclusions in the August 9, 2007 letter that the applicant's proposed use qualifies as an exempt domestic use. On August 24, 2007, Allen Merritt responded to the Sage Springs letter of inquiry. Merritt's letter outlined the Department's reasoning in concluding that the applicant's proposed use qualifies as an exempt domestic use.

On September 4, 2007, the Department received a letter from Sage Springs through its attorney, Travis Thompson, requesting reconsideration and hearing pursuant to Idaho Code § 42-1701A(3).

On September 18, 2007, the applicant filed a drilling permit application that has been numbered 849072 for construction of a well for an exempt domestic use as defined by Idaho Code § 42-111(1)(a).

On October 11, 2007, the Department issued a preliminary order granting the drilling permit but staying construction and granting the petition for hearing. In the order, the scope of the hearing was limited to the following issues:

1. Whether or not the proposed use at the Rotarun Ski facility qualifies as an exempt domestic use as defined by Idaho Code § 42-111(1)(a).
2. The appropriate conditioning of the drilling permit.

On November 23, 2007, Sage Springs filed with the Department a request for the appointment of an independent hearing officer.

On January 24, 2008, the Department issued an order denying the request for independent hearing officer. The order notified the parties that the Director of the Department, David R. Tuthill, Jr. would conduct the hearing.

On July 29, 2008, the Director of the Department held a hearing in Hailey, Idaho.

FINDINGS OF FACT

1. The Department issues drilling permits pursuant to Idaho Code § 42-235 and regulates well drillers pursuant to Idaho Code § 42-238.
2. Pursuant to Idaho Code § 42-227, ground water uses that satisfy the domestic limitations of Idaho Code § 42-111 are exempt from the application, permit, and license procedure for ground water rights required by Idaho Code § 42-229.
3. Idaho Code § 42-111 states in pertinent part:

DOMESTIC PURPOSES DEFINED.

(1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase “domestic purposes” or “domestic uses” means:

(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or

(b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

(2) For purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless

the use meets the diversion rate and volume limitations set forth in subsection (1)(b) of this section.

(3) Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

4. The applicant proposes to drill a well and divert water within a portion of Department administrative basin 37. The appropriation of ground water underlying the proposed well site is subject to the Big Wood River Ground Water Management Area and Management Policy established June 28, 1991. Additionally, the site is within the area described by a Moratorium Order amended April 30, 1993 limiting approvals of applications for permits for the diversion of surface or ground water within the Eastern Snake River Plain Area, including ground water sought for appropriation by Rotarun. Both the June 28, 1991 policy and the April 30, 1993 moratorium order allow for continued development of domestic uses as defined in Idaho Code § 42-111.

5. Rotarun charges fees for lift tickets. The fees partially satisfy the expenses of operation. Rotarun relies on donations of money, donations of time or labor, and donations of services to satisfy the other costs of operation. Rotarun is a nonprofit organization.

6. Rotarun intends to divert 13,000 gallons per day (gpd) from the proposed well and the well(s) from Sage Springs community system to supply water for uses at the ski facility. Rotarun proposes use of domestic water from the proposed well at the lodge. Rotarun also proposes delivery of domestic water to fill a three acre-foot storage pond. At a pond fill rate of 13,000 gpd, Rotarun could fill the three acre-foot pond in approximately 25 days.

7. Rotarun proposes to divert domestic water from the pond for snow making. On days when Rotarun would create snow with the stored domestic water, Rotarun would drain or partially drain the three-acre foot pond. Daily use of water would exceed 13,000 gpd. The cycle of refilling the pond from the domestic well and rapid draining of the pond for snowmaking would probably be repeated several times during the ski season.

8. Sage Springs holds water right license no. 37-8673 and water permit no. 37-8900. These rights authorize use of ground water on the 20 lots of Sage Spring Subdivision but do not appear to authorize the use of ground water at Rotarun.

9. During the hearing a stipulation to admission of pre-marked Exhibits 1 through 3 was received. Other pre-marked exhibits were offered and subsequently admitted as a part of the record. The following is a listing of exhibits admitted:

APPLICANT'S:

Exhibit 1	Don Wiseman prepared testimony
Exhibit 2	Jeffery Neel prepared testimony
Exhibit 3	Joan Wiseman prepared testimony
Exhibit 4	Geoffrey Smith prepared testimony
Exhibit 5	Adele Savaria prepared testimony
Exhibit 6	Preliminary Order of October 11, 2007
Exhibit 7	August 7, 2006 Brockway letter to Merritt
Exhibit 8	August 9, 2006 Merritt letter to Brockway
Exhibit 9	August 24, 2007 Merritt letter to Thompson
Exhibit 10	September 4, 2007 Thompson letter to Merritt

PROTESTANT'S

Exhibit A	Rotarun 3/13/08 "Categorical Exclusion Request Form" to Blaine Co.
Exhibit B	March 8, 2006 Merritt letter to Brockway
Exhibit C	March 6, 2006 Brockway letter to Merritt including 2 applications with attachments
Exhibit D	Rotarun Ski Area Snow Making Water Requirements spreadsheet
Exhibit E	Section 3 (page 11) of March 12, 2007 document by Alpen Tech describing potential reservoir at Rotarun
Exhibit F	Pommerelle Water Rights 45-7745
Exhibit G	Sun Valley Water Rights
Exhibit H	Bogus Basin Water Rights
Exhibit I	Pond Memorandum "Application Processing # 67 (Permitting Requirements for Ponds)"
Exhibit J	Bogus Basin Amended Articles

ANALYSIS

There were four main issues identified during the hearing that must be addressed: (1) Is Rotarun ski facility an organization camp within the domestic definition of Idaho Code § 42-111? (2) Is snow making or storage of water a use to be considered within the domestic definition of Idaho Code § 42-111? (3) Are the words "diversion" and "use" the same or interchangeable within the context of Idaho Code § 42-111? (4) What is the meaning of the phrase "total use" as used in Idaho Code § 42-111?

Normally ski facilities are for-profit ventures. Snow making for ski facilities and other associated uses of water fall within the broader use category of commercial water use. The snow making normally requires daily water use in excess of 13,000 gpd.

In contrast, Rotarun is not a commercial or business enterprise, but is a nonprofit entity. The ski students do not reside at the facility, but attend day camps. The students are organized for the specific purpose of learning how to ski. Based on the evidence and testimony, Rotarun is an organization camp. Rotarun's proposed uses are "domestic uses" of ground water defined in Idaho Code § 42-111(1)(a) provided the limitations of the statute are satisfied.

The words "Uses" or "Purposes" appear to be interchangeable or intended to have the same or similar meaning in Idaho Code § 42-111. "Idaho Code § 42-111(1)(a) authorizes use of water for the organization camp and use ...for any other purpose in connection therewith." (emphasis added). Snow making, diversion to storage, storage, and/or in-house use may all be considered within the global "domestic" purposes definition provided the limitations provided in Idaho Code § 42-111 are met.

Idaho Code § 42-111(1)(a) limits the domestic use to a "total use" of 13,000 gallons per day. The phrase "total use" in Idaho Code § 42-111 is the sum total of the water used for domestic purposes during each day. "Total use" is not a synonym for total water diverted each day. Re-diversion from any storage facility for a particular purpose is additive to the "total use" sum. Attachment "A" is a spreadsheet used by IDWR to determine total domestic use. Assuming a one acre area by one foot deep pond to be filled in the fall of the year with minor in-house use is somewhat similar to the Rotarun ski facility proposal. The important item on Attachment "A" is the "Other (GPD)" line item where "use from the pond" would be input into the spreadsheet calculations. Note that the specific time depicted in Attachment "A" provides no diversion from storage for snow making and may or may not represent any final plan by Rotarun and is presented for illustrative purposes only. In the hypothetical example contained in Attachment "A", the total use is less than 13,000 gpd and represents total use for one day. During another day, the line items may vary but still can total only 13,000 gpd or less.

In summary, the phrase "total use" in Idaho Code § 42-111 for the Rotarun proposal is described by the following:

Use	Volume	Time
Domestic Purpose	13,000 gallons	1 day
Diversion to Storage	13,000 gallons	1 day
Diversion from Storage for Domestic	<u>13,000 gallons</u>	<u>1 day</u>
Total Use	13,000 gallons	1 day

Unless Rotarun is accountable for its total daily use, the use of water pumped from the proposed well plus the water diverted from the storage pond would likely exceed the daily use limitations of the definition of domestic purposes by Idaho Code § 42-111. Consequently, the drilling permit will only be approved upon condition that Rotarun design and construct its system so it physically cannot "use" in excess of 13,000 gpd. Alternatively, Rotarun may opt to install measuring and recording equipment to measure and record its daily use of ground water.

The scope of the hearing was limited to the issues identified in the hearing notice even though Sage Springs asked the Department to consider water availability and injury issues.

CONCLUSIONS OF LAW

1. Domestic wells in the Rotarun area may currently be drilled without an approved water right permit but must be drilled by a licensed driller after the Department approves a drilling permit.
2. Rotarun Ski Club, Inc. is currently an organizational camp and qualifies for a domestic use as defined in Idaho Code § 42-111 if the total use is limited properly.
3. Diversion of water to storage may be associated with a domestic use if limited properly.
4. Storage of water in a pond or other vessel may be associated with a domestic use if limited properly.
5. Use of water from storage may be associated with domestic use if limited properly.
6. Snow making may be associated with a domestic use if limited properly.
7. Total domestic use of water by Rotarun in any one day must be limited to 13,000 gallons.
8. The Department should issue a drilling permit with limitations.

ORDER

IT IS HEREBY ORDERED that application for drilling permit no. 849072 is **Approved**.

IT IS FURTHER ORDERED that the drilling permit is conditioned as follows:

1. At no time shall more than a total of 13,000 gpd be used directly from the well, from any storage facility deemed to be domestic in nature, or in combination with other domestic sources of water (Sage Springs well) unless other water right approvals are granted. Domestic beneficial uses might include:

Use for the purpose of rest room or lodge facilities

Use for the purpose of snow making

Use for the purpose of diversion to any storage facility for future use

Use from storage for any purpose

2. As a condition of accepting the drilling permit and prior to use of the proposed well, the drilling permit holder shall (1) prepare and submit to the Department a plan that will ensure no more than a total of 13,000 gallons per day is used at the facility, and (2) the Department must approve the plan. The plan must propose a system design that will mechanically limit the total use to 13,000 gallons or less per day. The plan must be prepared by a registered professional engineer licensed in the State of Idaho. Alternatively, the applicant may propose to voluntarily measure and record daily domestic use. If the applicant chooses to install a measuring device(s), a data logger(s) must also be installed to record the total daily use of all domestic water at the Rotarun Ski facility. Measurement of total daily use shall include ground water diverted from the domestic well approved for construction by this drilling permit and any water stored and used for purposes associated with the Rotarun facility which might include diversion to storage, diversion from storage, or any domestic use which may include snow making. As part of a measuring and recording plan, the drilling permit holder shall maintain total daily use records of all water delivered for domestic use. Upon request by the Department, the drilling permit holder shall submit the measurement records of the daily water use to the Department.

3. Failure to comply with the conditions of this order or the conditions of the drilling permit approval is cause for the Department to issue a cease and desist order to Rotarun or to initiate other administrative actions as authorized by Idaho Code.

4. This drilling permit is valid for two (2) months from the approval date for the start of construction and is valid for one (1) year from the approval date for completion of the well unless an extension has been granted.

5. This permit does not constitute an approval of the local Health District or the Idaho Department of Environmental Quality which may be required prior to construction of this

well. The local Health District should be contacted for septic tank/drainfield locations. Domestic wells must not be drilled closer than 100 ft. from any drainfield and 50 ft. from any septic tank. Public Water Supply wells must not be drilled closer than 100 ft. from any drainfield or septic tank.

6. The well shall be constructed by a driller currently licensed in the state of Idaho who must maintain a copy of the drilling permit at the drilling site.

7. Approval of this drilling permit does not authorize trespass on the land of another party.

8. This permit does not constitute other local, county, state, or federal approvals that may be required for construction of a well.

9. This drilling permit does not represent a right to divert and use the water of the State of Idaho. If the well being drilled is associated with approved water rights(s) use of the well must comply with conditions of said water right(s).

10. If a bottom hole temperature of 85 Degrees F (29.44°C) or greater is encountered, well construction shall cease and the well driller and the well owner shall contact the Department of Water Resources immediately.

11. Idaho Code, §§ 55-2201 - 55-2210 requires the applicant and/or its contractors to contact "Dig-line" (Dig-Line is a one-call center for utility notification) not less than 2 working days prior to the start of any excavation for this project. The "Dig-Line" Number for this location is 1-800-342-1585.

12. The well tag for the drilling permit/start card shall be securely and permanently attached to the well casing through welding or by the use of four closed end domed stainless steel pop rivets. The tag attachment will be done at the time of completion of the well, and prior to removing the drill rig from the drill site.

13. The use of water from this well is for Domestic purposes only which includes irrigation of up to ½ acre of land with all combined uses not to exceed 13,000 gallons per day (42-111[A]), or for Domestic uses other than for homes, organization camps, public campgrounds or livestock where the diversion rate and volume does not exceed 0.04 cfs and 2500 gpd (42-111[B]).

14. The screened, perforated, filterpacked or otherwise open and commingled strata shall not exceed 25% of the total well depth as measured from the bottom of the open interval to the top of the open interval(s). If, however, through geophysical logging of the well (or other means), it can be demonstrated the aquifers to be produced from are under similar hydraulic head, temperature and quality and are not subject to waste or contamination this may be waived and a greater open (screened or filterpacked section) may be approved.

15. If an annular space of at least 4 inches greater than the outside diameter of the casing is provided a granular bentonite or bentonite chips may be poured at the manufacturer recommended rate or no greater than 50 pounds in five minutes. The pour shall also be presifted through ¼-inch mesh screen to reduce the introduction of fines unless the annular space is free of water, (i.e. above the water table and there is no cascading water). The top of the seal shall be tagged at regular intervals, i.e. (30 ft. intervals) during placement with a sinker bar or other appropriate device to ensure the seal is reaching the intended depth. If bridging occurs, the seal shall be tamped to its intended position or the Department will be contacted for evaluation.

16. A 50% excess of seal material shall be on hand in the event of lost circulation. If the seal material does not return to the surface, then seal material is to be placed through a tremie pipe or by squeezing seal material through perforations from the top of the tagged seal. Pumping will continue until returns reach the surface, pressures become excessive, or the department is satisfied that different aquifers are sufficiently isolated and/or protected from waste and contamination.

17. The project engineer or geologist will be on site during seal placement should any peculiarities arise which require further evaluation. Any alteration of the proposed or herein modified well construction procedure shall be approved by the Department before it is undertaken.

18. Drilling fluids shall be mixed with water that meets or exceeds drinking water standards.

19. Aquifers with significantly different head, temperature, or quality shall not be commingled. Drilling of this well shall proceed in a manner that allows for the determination of the static head, temperature, and quality of each aquifer encountered.

20. The location at which this well is to be constructed must be at a site approved by the Idaho Department of Environmental Quality. The local Health District should also be contacted for septic tank/drain field locations. This well must not be drilled closer than 100 feet from any drain field or 100 feet from any septic tank.

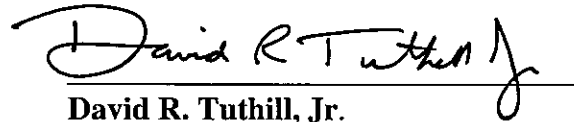
21. The Department of Environmental Quality requires that this well be sealed with an annular seal of bentonite grout for a minimum depth of sixty (60) feet from the ground surface. The bentonite grout shall be high-solids (>30%) and supplied by a major national grout manufacturer. The bentonite must have published permeability and density specifications and shall not contain chemical polymers, which negatively affect long-term stability of the grout.

22. All casing to be joined by welding shall have welds that are fully penetrating and at least as thick as the casing being joined. Both ends of casing joints shall be properly beveled and gapped to allow a fully penetrating root pass of E7018 or E6010 electrode. One or more additional passes are required to completely fill any remaining groove at the weld joint. Single-pass weld joints are not acceptable for joining steel casing.

23. Project Engineer and Idaho Department of Water Resources be notified 24 hours prior to surface seal placement.

The Department will issue the drilling permit document when this order becomes final.

Dated this 20th day of October, 2008.

A handwritten signature in black ink, reading "David R. Tuthill, Jr.", written over a horizontal line.

David R. Tuthill, Jr.
Director

FILE NUMBER _____ Rotanin
REVIEWER _____
DATE _____

MAXIMUM DAILY WATER USE FOR DOMESTIC PURPOSES

INPUTS	NOTES/SUGGESTED VALUES	RESULTS	FORMULAS
IN-HOUSE USE (AFY) _____ 0.7	IF UNKNOWN, USE IDWR STANDARD OF 0.8 AF FOR EACH HOUSE	TOTAL IN-HOUSE USE _____ 825 GPD	CONVERSION: 1 AFY = 892.74 GPD 1 AF = 325,850 G
LAWN AND GARDEN IRRIGATION			
ACRES IRRIGATED (AC) _____ 0	CANNOT EXCEED 1/2 ACRE FOR PART A DOMESTIC*		
ET _{pk80} (IN/DAY) _____	IF UNKNOWN, USE REFERENCE ET _{pk80} FOR TURF EXAMPLE 0.40 IN/DAY FOR HAGERMAN EXAMPLE 0.30 IN/DAY FOR STANLEY		
APPLICATION EFF. (%) _____	IF UNKNOWN, USE 70% FOR SPRINKLERS	TOTAL LAWN AND GARDEN IRRIGATION _____ 0 GPD	FORMULA: (ET _{pk80} EFF.) * IRRIG. AREA = GPD CONVERSION: ET _{pk80} = IN/DAY * FT/12IN = ACRE-FT/DAY PER ACF 1 AF = 325,850 G
POND			
SURFACE AREA (SQFT) _____ 43580		CAPACITY _____ 130680 CUFT 977486 G	FORMULA: SURFACE AREA * AVERAGE DEPTH = CAPACITY CONVERSION: 1 CUFT = 7.48 G
AVERAGE DEPTH (FT) _____ 3.00		CONVERT TO GPD _____ 10987 GPD	NOTE: GPD LIMITED BY POND CAPACITY CONVERSION: 1 CFS = 646,272 GPD
FILL OR REFILL RATE (CFS) _____ 0.017	USE 0 IF FILLED NATURALLY FROM GW TOTAL DOMESTIC RATE CANNOT EXCEED 0.04 CFS FOR PART B DOMESTIC*	REFERENCE EXAMPLE: ESTIMATED NUMBER OF DAYS TO FILL BASED ON PROVIDED INPUTS _____ 88.97 DAYS 2135 HR	FORMULA: CAPACITY / FILL RATE = TIME TO FILL
EVAPORATION (IN/DAY) _____ 0.05	IF UNKNOWN, USE REFERENCE ET _{pk80} FROM ABOVE	CONVERT TO GPD _____ 1358 GPD	FORMULA: EVAP * SURFACE AREA = POND EVAP CONVERSION: ET _{pk80} = IN/DAY * FT/12IN = ACRE-FT/DAY PER ACF 1 AF = 325,850 G NOTE: ASSUMES CONTINUOUS REPLACEMENT RATE
SEEPAGE RATE (FT/DAY) _____ 0.00	SUGGESTED VALUES FOR DIFFERENT SOIL TYPES: 0 = NATURALLY FILLED FROM GW, OR LINED 0.5 = CLAY SOILS 1.5 = LOAMS 3.0 = GRAVELS	CONVERT TO GPD _____ 0 GPD	FORMULA: SA * SEEPAGE LOSS = POND SEEPAGE (CUFT/D) CONVERSION: 1 CUFT = 7.48 G NOTE: ASSUMES CONTINUOUS REPLACEMENT RATE
FLOW-THROUGH (CFS) (REFRESH RATE) _____ 0	TOTAL DOMESTIC RATE CANNOT EXCEED 0.04 CFS FOR PART B DOMESTIC*	CONVERT TO GPD _____ 0 GPD	FORMULA: IF FILL RATE = 0 THEN GPD IS BASED ON CONTINUOUS FLOW IF FILL TIME > ONE DAY THEN GPD = 0 IF FILL TIME < ONE DAY THEN GPD = (24 HR - FILL TIME) * FLOW THROUGH RATE CONVERSION: 1 CFS = 646,272 GPD
		REFERENCE EXAMPLE: ESTIMATED NUMBER OF DAYS TO REFRESH BASED ON PROVIDED INPUTS _____ NA DAYS NA HR	FORMULA: CAPACITY / FLOW RATE = REFRESH TIME
OTHER (GPD) _____ 0.00	STOCKWATER, SMALL BUSINESS USE, ETC. EITHER FROM POND OR SEPARATE USE	TOTAL POND _____ 12344 GPD TOTAL OTHER _____ 0 GPD	TOTAL = FILL RATE + EVAP + SEEPAGE + FLOW THROUGH
		TOTAL WATER USE _____ 12969 GPD	TOTAL = IN-HOUSE USE + IRR + POND + OTHER

* NOTE: MAXIMUM VOLUME FOR EXEMPTION = 13,000 GPD FOR PART A DOMESTIC
MAXIMUM VOLUME FOR EXEMPTION = 2,500 GPD FOR PART B DOMESTIC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October, 2008, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid, and properly addressed to the following:

Document(s) Served: Final Order and Explanatory Information to Accompany a Final Order.

ROTARUN SKI CLUB INC
PO BOX 2083
HAILEY ID 83333

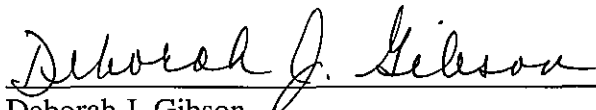
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PO BOX 1800
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TWIN FALLS ID 83303-485

CHARLES G BROCKWAY PE
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26 RODEO DRIVE
HAILEY ID 83333


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau